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United States Department of Labor

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

THOMAS E. PEREZ, Secretary of Labor,)	Docket No.: 5:13-cv-04448
United States Department of Labor,)	
)	
Plaintiff,)	COMPLAINT FOR VIOLATIONS
v.)	OF THE FAIR LABOR
)	STANDARDS ACT
RODOLFO L. CARDONA and ELVIRA)	(29 U.S.C. §§ 201, <u>et seq.</u>)
B. CARDONA, both individual)	
Defendants jointly doing business as)	
MONTE FARLEY MANOR GUEST)	
HOME, MONTE FARLEY II, URSO'S)	
MONTE FARLEY MANOR, and)	
MONTE FARLEY IV,)	
)	
Defendants.)	

1 1. Plaintiff THOMAS E. PEREZ, Secretary of Labor, United States
2 Department of Labor, brings this action to enjoin Defendants RODOLFO L.
3 CARDONA and ELVIRA B. CARDONA, both individual Defendants jointly
4 doing business as MONTE FARLEY MANOR GUEST HOME, MONTE
5 FARLEY II, URSO'S MONTE FARLEY MANOR, and MONTE FARLEY IV
6 (the "Defendants") from violating the provisions of Sections 15(a)(2) and 15(a)(5)
7 of the Fair Labor Standards Act of 1938, as amended (hereinafter called "FLSA"
8 or the "Act"), 29 U.S.C. §§ 215(a)(2) and 215(a)(5), and to recover unpaid
9 overtime and minimum wage compensation owed under the Act to present and
10 former employees of Defendants, including those listed by name on the attached
11 Exhibit A to this Complaint, together with an equal amount of liquidated damages,
12 pursuant to Section 16(c) of the Act, 29 U.S.C. § 216(c).

13 2. This Court has subject matter jurisdiction pursuant to Sections 16(c)
14 and 17 of the Act, 29 U.S.C. §§ 216(c) and 217; this Court also has subject matter
15 jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 28 U.S.C. § 1345
16 (United States as plaintiff).

17 3. Venue lies in the United States District Court for the Northern District
18 of California pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events
19 giving rise to the claims at issue occurred in or around Santa Clara County,
20 California.

21 4. (a) Defendant RODOLFO L. CARDONA, an individual d/b/a
22 MONTE FARLEY MANOR GUEST HOME, MONTE FARLEY II, URSO'S
23 MONTE FARLEY MANOR, and MONTE FARLEY IV, at all times hereinafter
24 mentioned had a place of business at 586 Burgoyne Street, Mountain View,
25 California 94043, within the jurisdiction of this Court, and is, and at all times

1 hereinafter mentioned was, engaged in the operation of institutions primarily
2 engaged in the care of the sick, the aged, or the mentally ill or defective who reside
3 on the premises of such institution.

4 (b) Defendant ELVIRA B. CARDONA, an individual d/b/a
5 MONTE FARLEY MANOR GUEST HOME, MONTE FARLEY II, URSO'S
6 MONTE FARLEY MANOR, and MONTE FARLEY IV, at all times hereinafter
7 mentioned had a place of business at 586 Burgoyne Street, Mountain View,
8 California 94043, within the jurisdiction of this Court, and is, and at all times
9 hereinafter mentioned was, engaged in the operation of institutions primarily
10 engaged in the care of the sick, the aged, or the mentally ill or defective who reside
11 on the premises of such institution.

12 5. Defendants operated businesses that are, and at all times hereinafter
13 mentioned were, engaged in related activities performed through unified operation
14 or common control for a common business purpose, and are and at all times
15 hereinafter mentioned were, an enterprise within the meaning of Section 3(r) of the
16 Act, 29 U.S.C. § 203(r).

17 6. Defendants operated businesses that are, and at all times hereinafter
18 mentioned were, an enterprise engaged in commerce or in the production of goods
19 for commerce within the meaning of Section 3(s)(1)(B) of the Act, 29 U.S.C. §
20 203(s)(1)(B), in that said enterprise at all times hereinafter mentioned had
21 employees engaged in the operation of institutions primarily engaged in the care of
22 the sick, the aged, or the mentally ill or defective who reside on the premises of
23 such institutions.

24 7. Defendants violated the provisions of Sections 6 and 15(a)(2) of the
25 Act, 29 U.S.C. §§ 206 and 215(a)(2), by employing employees who in workweeks
26

1 were engaged in the operation of institutions primarily engaged in the care of the
2 sick, the aged, or the mentally ill or defective who reside on the premises of such
3 institutions within the meaning of the Act, as aforesaid, at hourly wage rates less
4 than the federal minimum wage from at least the period from November 8, 2009,
5 through November 7, 2011.

6 8. Defendants violated the provisions of Sections 7 and 15(a)(2) of the
7 Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees who in workweeks
8 were engaged in the operation of institutions primarily engaged in the care of the
9 sick, the aged, or the mentally ill or defective who reside on the premises of such
10 institutions within the meaning of the Act, as aforesaid, for workweeks longer than
11 forty hours without compensating said employees for their employment in excess
12 of forty hours per week during such workweeks at rates not less than one and one-
13 half times the regular rate at which they were employed from at least the period
14 from November 8, 2009, through November 7, 2011.

15 9. Defendants, employers subject to the provisions of the Act, have
16 violated the provisions of sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§
17 211(c) and 215(a)(5), in that they failed to make, keep, and preserve adequate and
18 accurate records of employees and the wages, hours and other conditions and
19 practices of employment maintained by them as prescribed by regulations duly
20 issued pursuant to authority granted in the Act and found in 29 CFR § 516, in that
21 records fail to show adequately and accurately, among other things, the hours
22 worked each workday with respect to several employees.

23 10. (a) During the period from November 8, 2009, through November
24 7, 2011, and thereafter, Defendants have willfully violated the aforesaid provisions
25 of the Act.

1 (b) As a result of the aforesaid violations of the Act, there is unpaid
2 minimum wage compensation being withheld by Defendants.

3 (c) As a result of the aforesaid violations of the Act, there is unpaid
4 overtime compensation being withheld by Defendants.

5 (d) Judgment permanently enjoining and restraining such violations
6 of the Act is specifically authorized by Section 17 of the Act, 29 U.S.C. § 217.

7 (e) Judgment enjoining and restraining any continued withholding
8 of unpaid overtime compensation due under the Act is specifically authorized by
9 Section 17 of the Act, 29 U.S.C. § 217.

10 (f) Judgment awarding unpaid back wages due under the Act, plus
11 an additional amount as liquidated damages that is equal to the amount of the back
12 wages that accrued under the Act, is specifically authorized by Section 16(c) of the
13 Act, 29 U.S.C. § 216(c).

14 **WHEREFORE**, cause having been shown, Plaintiff prays for a judgment
15 against Defendants as follows:

16 (a) For an Order pursuant to Section 17 of the Act, 29 U.S.C. § 217,
17 permanently enjoining and restraining Defendants, their officers, agents, servants,
18 employees, and those persons in active concert or participation with Defendants,
19 from prospectively violating the provisions of Section 15(a)(2) and 15(a)(5) of the
20 Act, 29 U.S.C. §§ 215(a)(2), 215(a)(5); and

21 (b) For an Order
22 (i) pursuant to Section 16(c) of the Act, 29 U.S.C. § 216(c),
23 finding Defendants liable for minimum wage and overtime compensation due
24 Defendants' employees and for liquidated damages equal in amount to the unpaid
25 minimum wage and overtime compensation found due to Defendants' employees,

1 including those listed in the attached Exhibit A (additional back wages and
2 liquidated damages may be owed to certain employees presently unknown to
3 Plaintiff for the Subject Period covered by this Complaint), or in the event
4 liquidated damages are not awarded;

5 (ii) pursuant to Section 17 of the Act, 29 U.S.C. § 217, enjoining
6 and restraining Defendants, its officers, agents, servants, employees and those
7 persons in active concert or participation with Defendants, from withholding
8 payment of unpaid back wages found to be due Defendants' employees, and pre-
9 judgment interest at an appropriate interest rate;

10 (c) For an Order awarding Plaintiff the costs of this action; and

11 (d) For an Order granting such other and further relief as may be
12 necessary or appropriate.

13
14 Dated: September 25, 2013

15 M. PATRICIA SMITH
16 Solicitor of Labor

17 JANET M. HEROLD
18 Regional Solicitor

19 By:

20 /s/ David M. Kahn
21 DAVID M. KAHN
22 Counsel for Employment Standards

23 Attorneys for Plaintiff
24 Secretary of Labor,
25 U.S. Department of Labor
26

EXHIBIT A

Cecilia Abaieras
Armando Burgos
Christeta Buan
Leonido Buan
Hermenio Caoi
Leticia Caoi
Cynthia Corpuz
Evangeline Erquiza
Marilyn Estrada
Nelly Pula
Laura Tugade
Gerardo Ubay